

be prejudiced by the decision to be rendered at the hearing; and

(3) CMS.

**§ 423.652 Postponement of effective date of a contract determination when a request for a hearing for a contract determination is filed timely.**

(a) CMS postpones the proposed effective date of the contract determination to terminate a contract with a PDP sponsor until a hearing decision is reached and affirmed by the Administrator following review under § 423.666 in instances where a PDP sponsor requests review by the Administrator; and

(b) CMS extends the current contract at the end of the contract period (in the case of a determination not to renew) only—

(1) If CMS finds that an extension of the contract is consistent with the purpose of this part; and

(2) For the period as CMS and the PDP sponsor agree.

(c) Exception: A contract terminated in accordance with § 423.509(a)(4) or (a)(5) is immediately terminated and is not postponed if a hearing is requested.

**§ 423.653 Designation of hearing officer.**

CMS designates a hearing officer to conduct the hearing. The hearing officer need not be an ALJ.

**§ 423.654 Disqualification of hearing officer.**

(a) A hearing officer may not conduct a hearing in a case in which he or she is prejudiced or partial to any party or has any interest in the matter pending for decision.

(b) A party to the hearing who objects to the designated hearing officer must notify that officer in writing at the earliest opportunity.

(c) The hearing officer must consider the objections, and may, at his or her discretion, either proceed with the hearing or withdraw.

(1) If the hearing officer withdraws, CMS designates another hearing officer to conduct the hearing.

(2) If the hearing officer does not withdraw, the objecting party may, after the hearing, present objections and request that the officer's decision

be revised or a new hearing be held before another hearing officer. The objections must be submitted in writing to CMS.

**§ 423.655 Time and place of hearing.**

(a) The hearing officer fixes a time and place for the hearing, which is not to exceed 30 days from the receipt of the request for the hearing, and sends written notice to the parties. The notice also informs the parties of the general and specific issues to be resolved and information about the hearing procedure.

(b) The hearing officer may, on his or her own motion, or at the request of a party, change the time and place for the hearing. The hearing officer may adjourn or postpone the hearing.

(c) The hearing officer gives the parties reasonable notice of any change in time or place of hearing, or of adjournment or postponement.

**§ 423.656 Appointment of representatives.**

A party may appoint as its representative at the hearing anyone not disqualified or suspended from acting as a representative before the Secretary or otherwise prohibited by law.

**§ 423.657 Authority of representatives.**

(a) A representative appointed and qualified in accordance with § 423.656, on behalf of the represented party—

(1) Gives or accepts any notice or request pertinent to the proceedings set forth in this subpart;

(2) Presents evidence and allegations as to facts and law in any proceedings affecting that party; and

(3) Obtains information to the same extent as the party.

(b) A notice or request sent to the representative has the same force and effect as if it is sent to the party.

**§ 423.658 Conduct of hearing.**

(a) The hearing is open to the parties and to the public.

(b) The hearing officer inquires fully into all the matters at issue and receives in evidence the testimony of witnesses and any documents that are relevant and material.

#### **§ 423.659**

(c) The hearing officer provides the parties an opportunity to enter any objection to the inclusion of any document.

(d) The hearing officer decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

#### **§ 423.659 Evidence.**

The hearing officer rules on the admissibility of evidence and may admit evidence that is inadmissible under rules applicable to court procedures.

#### **§ 423.660 Witnesses.**

(a) The hearing officer may examine the witnesses.

(b) The parties or their representatives are permitted to examine their witnesses and cross-examine witnesses of other parties.

#### **§ 423.661 Discovery.**

(a) Prehearing discovery is permitted upon timely request of a party.

(b) A request is timely if it is made before the beginning of the hearing.

(c) A reasonable time for inspection and reproduction of documents is provided by order of the hearing officer.

(d) The hearing officer's order on all discovery matters is final.

#### **§ 423.662 Prehearing.**

The hearing officer may schedule a prehearing conference if he or she believes that a conference may more clearly define the issues.

#### **§ 423.663 Record of hearing.**

(a) A complete record of the proceedings at the hearing is made and transcribed and made available to all parties upon request.

(b) The record may not be closed until a hearing decision is issued.

#### **§ 423.664 Authority of hearing officer.**

In exercising his or her authority, the hearing officer must comply with the provisions of title XVIII and related provisions of the Act, the regulations issued by the Secretary, and general instructions issued by CMS in implementing the Act.

#### **42 CFR Ch. IV (10–1–06 Edition)**

#### **§ 423.665 Notice and effect of hearing decision.**

(a) As soon as practical after the close of the hearing, the hearing officer issues a written decision that—

(1) Is based upon the evidence of record; and

(2) Contains separately numbered findings of fact and conclusions of law.

(b) The hearing officer provides a copy of the hearing decision to each party.

(c) The hearing decision is final and binding unless it is reversed or modified by the Administrator following review under § 423.666, or reopened and revised in accordance with § 423.668.

#### **§ 423.666 Review by the Administrator.**

(a) *Request for review by the Administrator.* A PDP sponsor that receives a hearing decision upholding a contract termination determination may request review by the Administrator within 15 days of receiving the hearing decision as provided under § 423.665(b).

(b) *Review by the Administrator.* The Administrator must review the hearing officer's decision, and determine, based upon this decision, the hearing record, and any written arguments submitted by the PDP sponsor, whether the termination decision must be upheld, reversed, or modified.

(c) *Decision by the Administrator.* The Administrator issues a written decision, and furnishes the decision to the PDP sponsor requesting review.

#### **§ 423.667 Effect of Administrator's decision.**

A decision by the Administrator under section § 423.666(c) is final and binding unless it is reopened and revised in accordance with § 423.668.

#### **§ 423.668 Reopening of contract or reconsidered determination or decision of a hearing officer or the Administrator.**

(a) *Initial or reconsidered determination.* CMS may reopen and revise an initial or reconsidered determination upon its own motion within 1 year of the date of the notice of determination.

(b) *Decision of hearing officer.* A decision of a hearing officer that is unfavorable to any party and is otherwise final may be reopened and revised by